ONTARIO SECURITIES COMMISSION

PERSPECTIVES

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inside...

FEATURE

Government Proposes Amendments to Securities Act, the Commodity Futures Act and the Toronto Stock Exchange Act

On November 16, 1999, proposed amendments to the *Securities Act,* the *Commodity Futures Act* and the *Toronto Stock Exchange Act* were introduced by the Minister of Finance as a part of the government's Fall 1999 Budget Bill. The proposed amendments are included in Bill 14, the *More Tax Cuts for Jobs, Growth and Prosperity Act, 1999* (the *"Prosperity Act"*). Bill 14 has received third reading and is awaiting royal assent.

The vast majority of the proposed amendments to the *Securities Act* and the *Commodity Futures Act* were previously submitted for inclusion in the government's Red Tape Bill. In the May 1999 Budget, the Government recognized the importance of strengthening and upgrading securities regulation and enhancing the capital markets. Inclusion of the *Securities Act* and the *Commodity Futures Act* amendments in the *Prosperity Act* underscores the Government's support for

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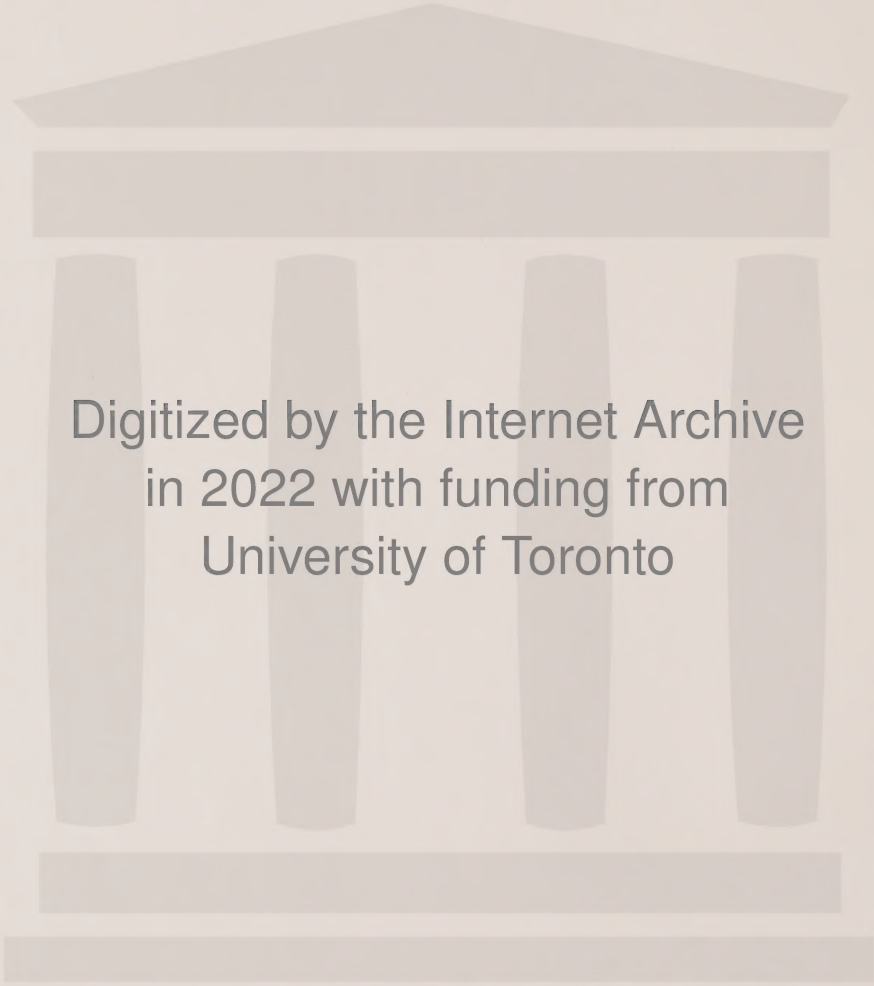

POLICY PROFILES

An overview of policy initiatives and where they stand in the policy development and implementation process.

Proposed Financial Planning Proficiency Standards

The Canadian Securities Administrators has published for comment proposed Multilateral Instrument 33-107(MI) which would create uniform financial planning proficiency standards applicable for individuals who are registered to trade or advise in securities and who use business titles that convey to consumers the impression that they are providing financial planning or similar advice, or to offer financial planning or similar services.

Although the MI is an initiative of the CSA, the proficiency regime has been developed in conjunction with a number of provincial insurance regulators and insurance councils. Some insurance regulators are seeking comment from their stakeholders on the proposed regime through the CSA comment process on the basis of the MI and accompanying Notice. Others are monitoring the results of the consultation. The Notice is intended to solicit comments from stakeholders in both the securities and insurance sectors. Any comments received will be used by participating insurance and securities regulators to create a harmonized proficiency standard applicable to both securities registrants and insurance licensees. The Commission des valeurs mobilières du Québec did not participate, as a comprehensive regulatory regime governing financial planners came into effect in Quebec on October 1, 1999.

Application of MI: Restricted Titles for Individuals and Firms

The proposed MI would operate as a new condition of registration for registered individuals and firms. The proposed MI would require registered individuals and firms to meet the new proficiency standard in order to use a title or service description that suggests financial planning expertise. The restricted titles are set out in the proposed MI. The restricted titles are defined on the basis of two word pools, one of which signifies the activity, and the other the subject of the activity. There is a carve out for certain word combinations when used as a business title by a limited category of individual registrants.

SUBJECT POOL	ACTIVITY POOL	CARVE OUT
any term	**planner**	**none**
financial, retirement, wealth, money, security, asset	adviser, advisor, consultant, specialist, expert, counsellor, manager	[financial, security, money wealth, asset] + [manager] if registered as portfolio manager and activities confined to discretionary portfolio management

Similar title restrictions apply to firms holding themselves or their employees out using business titles or service descriptions that connote financial planning or similar advice. Firms must provide this advice through an individual who meets the proficiency standard.

Proficiency Standard

The proficiency standard, which must be met before a registrant can hold himself or herself out under a restricted title, consists of:

1. Passing the Financial Planning Proficiency Examination (FPPE), currently under development by the CSA in consultation with industry and educational experts;

2. Two years industry experience, identified by registration, in the previous five calendar years; and

3. A commitment to an acceptable continuing education program.

The FPPE will be designed in accordance with accepted procedures in the measurement profession by a group of experts representing the principal course providers and a specialist in measurement and evaluation. The FPPE will test proficiency in various subject areas as are necessary to provide competent comprehensive integrated financial advice of the type a consumer would associate with the term "financial planning".

Transitional Grandfathering Relief

Transitional grandfathering relief from the examination requirement is included for people who have completed a recognized course of study primarily directed at financial planning expertise. This includes individuals enrolled in such a course on the effective date of the MI who complete the course within two years. Until the grandfathering criterion is met an individual cannot use a restricted title. Designations are only specified where they indicate an additional level of testing beyond the course of study necessary to obtain them.

The categories of grandfathered individuals are:

a. Individuals who, as of •, 2001, have passed the Professional Proficiency Examination administered by the Financial Planners Standards Council.

b. Individuals who, as of •, 2001, hold the designation of Personal Financial Planner administered by The Institute of Canadian Bankers.

c. Individuals who, as of •, 2001, have passed the Professional Financial Planning Course and examinations offered by the Canadian Securities Institute.

d. Individuals who, as of •, 2001, have completed a comprehensive financial planning program offered by the

Canadian Institute of Financial Planning and passed the associated examinations.

e. Individuals who, as of •, 2001, have passed the Registered Financial Planner examination and hold the designation of Registered Financial Planner administered by the Canadian Association of Financial Planners.

f. Individuals who, as of •, 2001, have passed the courses and examinations in the Chartered Financial Consultant program administered by the Canadian Association of Insurance and Financial Advisors.

g. Individuals who, as of •, 2001, hold the designation of Specialist in Financial Counseling administered by The Institute of Canadian Bankers and, within two years after •, 2001, have passed its Insurance and Estate Planning Course and Taxation and Investment Course.

h. Individuals who, as of •, 2001, were enrolled in a course of study of the Specialist in Financial Counseling Program of The Institute of Canadian Bankers and, within two years after •, 2001, have:
   1) Obtained its designation of Specialist in Financial Consulting; and
   2) Passed its Insurance and Estate Planning Course and Taxation and Investment Course.

i. Individuals who, as of •, 2001, were enrolled in a course of study approved by the Financial Planners Standards Council and, within two years after •, 2001, have passed the Professional Proficiency Examination administered by it.

j. Individuals who, as of •, 2001, were enrolled in the comprehensive financial planning program offered by the Canadian Institute of Financial Planning and, within two years after •, 2001, have passed the associated examinations.

k. Individuals who, as of •, 2001, were enrolled in a course of study of the Personal Financial Planning Program of The Institute of Canadian Bankers and, within two years after •, 2001, have obtained its designation of Personal Financial Planner.

l. Individuals who, as of •, 2001, were enrolled in the Professional Financial Planning Course offered by the Canadian Securities Institute and, within two years after •, 2001, have passed the associated examinations.

m. Individuals who, as of •, 2001, were enrolled in the Chartered Financial Consultant program administered by the Canadian Association of Insurance and Financial Advisors and, within two years after •, 2001, have passed the associated examinations.

n. Individuals who, as of •, 2001, have received a diploma from the Institut québécois de planification financière and were authorized by it to use the title of financial planner under the Act respecting the distribution of financial products and services (Quebec).

Effective Date of Multilateral Instrument
The effective date of the Multilateral Instrument will be the date on which the results of the first FPPE can be made available. The present projected date is early in 2001.

Notice
Individuals intending to satisfy the requirements of the MI must file a notice to that effect. Individuals intending to rely on the grandfathering relief must file the notice within three years of the effective date of the MI. Individuals who are enrolled in one of the courses of study on the effective date of the MI must pass the course within two years of the effective date of the MI if they intend to rely on grandfathering relief when they file their notice.

Comment Period
The CSA Notice accompanying the proposed Multilateral Instrument invites interested parties to make written submissions by March 6, 2000. Parties interested in making comments should consult the Notice and the Multilateral Instrument at OSC website *www.osc.gov.on.ca*

For more information, please call **Julia Dublin**, Chair, CSA Financial Planning Committee, (416) 593-8103.
22 OSCB December 3, 1999, page 7669

Additional Proficiency Updates

The OSC has published for comment changes to a proposed Rule on Proficiency Requirements for Registrants (Rule 31-502). In general, the Rule updates and consolidates the proficiency requirements for dealers and advisers by codifying the OSC Staff's practice of accepting certain alternative courses.

The recent Notice outlines changes developed after the Minister of Finance returned the Rule to the Commission for further consideration in December 1998. Among the key proposed changes:

- Limiting the number of restricted representatives whose full service dealer registration may be restricted to the sale of mutual funds and requiring such restricted representatives to upgrade their proficiency to the full service dealer level within 9 months of registration.

- Requiring new branch managers who supervise options trading to complete an options supervisors course. Current branch managers who supervise option, traders are not required to complete the course.

- Requiring an applicant to have completed a required course not more than three years, rather than five years, before the date of application.

For more information, please call **Dirk de Lint**, Legal Counsel, Market Regulations (416) 593-8090.
22 OSCB September 17, 1999, page 5739

Insider Reporting Requirement Exemptions

In order to reduce the burden of unnecessary regulatory obligations for company executives, the CSA have proposed National Instrument 55-101 (the "Instrument") that would provide certain exemptions from insider reporting requirements.

The Instrument would provide an exemption from the obligation to file insider reports for certain directors and senior officers of subsidiaries and affiliates of insiders who neither hold the securities of a reporting issuer in significant amounts nor are in a position to acquire knowledge of undisclosed material information. The Instrument would also permit directors and senior officers of reporting issuers to report acquisitions of securities under automatic securities purchase plans on an annual basis in most circumstances.

"The Instrument would help to relieve reporting burdens that stem from certain aspects of Canadian securities legislation."

The Instrument would help to relieve reporting burdens that stem from certain aspects of Canadian securities legislation. For example, securities legislation obliges insiders to disclose ownership of and trading in securities of reporting issuers. Every director or senior officer of a company that is itself an insider of a reporting issuer is also an insider of the reporting issuer. Securities legislation (except in Quebec) stipulates that a company is deemed to beneficially own securities that are beneficially owned by its affiliates. As a result, directors and senior officers of affiliates of an insider of a reporting issuer must meet insider reporting requirements. These directors and officers may have no relationship with the reporting issuer and no access to undisclosed material information about the issuer. The Instrument would generally relieve such persons from insider reporting requirements. Likewise, the Instrument would generally relieve directors and officers of minor subsidiaries of a reporting issuer from insider reporting requirements.

In addition, Canadian securities legislation requires insiders to file a report for each purchase made under automatic securities purchase plans. These purchases typically are made in amounts, and at prices and times set by established criteria, where the insider's only decision is whether to continue or cease participating in the plan. Again, the Instrument would provide relief from insider reporting requirements in such circumstances, and would substitute an annual reporting requirement instead.

For more information, please call **Victoria Stewart**, Legal Counsel, Corporate Finance, (416) 593-8266.

22 OSCB August 20, 1999, page 5161.

OSC REPORTS

An inside look at Commission developments and projects that will have an impact on the investment community.

Two New Commissioners Appointed

Theresa ("Terry") **McLeod** has joined the OSC as a Commissioner effective October 27, 1999. She is a Chartered Financial Analyst and Founder and President of McLeod Capital Corporation, a financial and regulatory consulting firm established in January 1997. The firm's clients are primarily in the natural gas and electric utilities industry in Western Canada. Ms. McLeod has worked in the investment banking industry since 1971. Her most recent affiliations were with Merrill Lynch and ScotiaMcLeod.

Robert W. Davis, FCA, has been named a Commissioner, effective November 29, 1999. Mr. Davis is a retired Partner with the firm of KPMG and is a Member and Fellow of the Ontario and Canadian Institute of Chartered Accountants. He is presently a Member of the Board of Directors of the Dai-Ichi Kangyo Bank (Canada) and President of Camiton Inc., a private holding firm through which he provides a range of financial, management consulting and business advisory services.

New OSC Secretary

John Stevenson has recently been appointed as the new Secretary to the OSC. Most recently, he served as Corporate Secretary and Counsel for a Canadian international finance company. Prior to this he practiced corporate securities and administrative law with a leading Toronto law firm. Mr. Stevenson is a graduate of Queen's University, Faculty of Law, and for over 13 years was a professor and consultant in business and management studies.

OSC Releases 1999 Annual Report

Delivered to a broad section of the Ontario investment community, the OSC's 1999 Annual Report reflects the new energy at the Commission as it embarked on its first full year as a self-funded Crown Corporation. The report contains highlights of the year as well as a summary of the significant enforcement actions from the last 12 months.

The 1999 Annual Report is available on the OSC web site *www.osc.gov.on.ca*.

Dialogue with the OSC

On October 26, the OSC hosted "Dialogue with the OSC", an all-day industry conference focusing on the Commission's Statement of Priorities. Topics included Enforcement Actions,

Mergers and Acquisitions, Electronic Trading and Changing Markets, Registrant Regulations and a Corporate Finance Update. Over 250 delegates from the professional as well as investor communities participated.

The day started with a Panel of Chairs from Ontario, Alberta and British Columbia. The Chairs discussed the Multi Jurisdictional Disclosure System and the Mutual Reliance Review System, among other issues. The keynote speaker was Douglas Hyndman, Chair of the British Columbia Securities Commission.

OSC Conducts Corporate Disclosure Survey

The OSC has recently created a Continuous Disclosure Team (CDT) within its Corporate Finance Branch to review the continuous disclosure filings made by public companies and address policy issues in the area of continuous disclosure. The quality of financial reporting and other continuous disclosure made by public companies has become a major focus at the OSC.

One of the CDT's first policy initiatives is to address the issue of selective disclosure of material information. The issue of selective disclosure arises when a company discloses material information to select groups or individuals that has not been disclosed to the public. The disclosure of non-public material information to these recipients gives them a potential advantage over other investors who do not have access to this information. Unequal access to information undermines the 'fairness' of the capital markets and results in an uneven playing field.

As a first step in addressing the issue of selective disclosure, staff has conducted a survey of disclosure practices of public companies. Four hundred public companies were randomly selected across all industries to participate in a Corporate Disclosure Survey. The survey was sent at the beginning of October and responses were due by the beginning of November. Companies that have not received a copy of the survey and wish to provide input can complete the survey on the OSC website at *www.osc.gov.on.ca*.

The survey questions explored companies disclosure practices and policies concerning:

- meetings and discussions with analysts and other groups or individuals;
- restrictions on who is invited to participate in quarterly conference calls;
- responses to requests for information that is not available on the public record;
- commenting on draft analyst reports;
- duration of time for a "black-out" period prior to scheduled earnings releases during which no sensitive information is provided by the company; and
- procedures companies follow if material non-public information is inadvertently disclosed to select groups or individuals.

The survey was not intended to identify companies that are selectively disclosing information. Rather, the objective of the survey was to seek input from public companies on current practices and how they could be improved.

Staff expects the results of the survey will enable the OSC to report best practices related to disclosure in the Canadian market and provide guidance to issuers and their advisors.

For more information please call **Heidi Franken**, Manager, Continuous Disclosure (416) 593-8249, **Joanne Peters**, Senior Legal Counsel (416) 593-8134 or **Lisa Enright**, Senior Accountant (416) 593-3686.

OSC Warns Financial Institutions Re: Processing of Trades for Mutual Fund Dealers

The OSC has issued a staff notice warning financial institutions against processing equity and fixed income trades for clients of mutual fund dealers.

In some cases, equity and fixed income trades for clients of mutual fund dealers are being processed by financial institutions using certain exemptions in the Regulations that permit a financial institution to accept and process unsolicited equity trades without registration, provided the trades are executed through a registered dealer. Some financial institutions have pre-printed trade tickets, which are distributed to mutual fund dealers. In certain cases, the representative of the mutual fund dealer signs the trade ticket using a power of attorney signed by the client. Some dealers have even advertised the ability to process trades through financial institutions.

"Staff is concerned that financial institutions are using certain exemptions to allow mutual fund dealers to carry on a business in processing client equity and fixed income trades."

Many of these trades take place in the self-directed RRSP accounts offered by the mutual fund dealer. Dealers have also acted as administrators for these RRSP accounts on behalf of the financial institutions. Should these accounts hold equity and fixed income securities, OSC staff is of the view that the mutual fund dealer is carrying on activities not in compliance with their registration.

Staff is concerned that financial institutions are using certain exemptions under the Regulation to allow the mutual fund dealer to carry on a business in processing client trades that a mutual fund dealer is not entitled to make under their registration. In addition, staff is concerned that these trades are not

truly unsolicited since there is a high volume of trades, the practice has been advertised, and pre-printed, mass-produced trade tickets are being provided to clients. This would suggest the financial institution is also carrying on improper trading activities.

In staff's view, compliance with securities legislation dictates that financial institutions and mutual fund dealers which have employed this structure advise clients that they are not permitted by securities law to handle trades in equity and fixed income securities.

Staff considers the following as acceptable actions to ensure compliance for those accounts containing equity and fixed income securities currently being held on the books and records of the mutual fund dealer.

The dealer could give clients the options of:

1) Transferring their accounts to an appropriately registered dealer;
2) Transferring the equity and fixed income portion of the account to an appropriately registered dealer; or
3) Opening a delivery-against-payment account at a securities or investment dealer for each client to facilitate equity and fixed income transactions and transferring all positions in the account to the trust company that will act as custodian of all assets in the account. Under option 3, clients would have to direct all equity and fixed income trades directly to the securities or investment dealer.

OSC staff intends to devote field examination resources to further address these issues.

For more information, please call **Elle Koor**, Senior Accountant, Compliance, (416) 593-8077, or **Jennifer Elliott**, Legal Counsel, Market Regulation, (416) 593-8109.

22 OSCB November 12, 1999 page 7091

OSC Suggests Companies, Registrants Take Steps as SEC Reviews MJDS Comments

The OSC staff is advising Canadian issuers to take a number of steps in light of the US Securities and Exchange Commission's (SEC's) request for comment on whether to continue the Multi-Jurisdictional Disclosure System (MJDS) for Canadian issuers.

"OSC staff suggests that Canadian companies consider reviewing the Aircraft Carrier Release in case the MJDS may not be available to them in the future."

The SEC requested comments in connection with its proposal for reforming its registration system (SEC Release Nos. 33-7606A, 34-40432A, IC-23519A (November 13, 1998), frequently referred to as the "Aircraft Carrier Release"). In response, the OSC staff suggests that Canadian companies consider reviewing the Aircraft Carrier Release in case the MJDS may not be available to them in the future.

As well, Canadian market participants may wish to evaluate the potential implications of two other SEC proposals: SEC Release Nos. 33-7611, 34-40678 Cross-Border Tender Offerings, Business Combinations, and Rights Offerings (November 13, 1998) and SEC Release Nos. 33-7637, 34-4104 International Disclosure Standards (February 2, 1999). These are available on the SEC website at www.sec.gov.

The OSC and other CSA members are continuing discussions with the SEC staff regarding the status of the MJDS. SEC staff has advised the OSC that any proposals relating to the MJDS would be published with a request for public comment before any final actions are taken.

For more information, please call **Kathryn Soden**, Director, Corporate Finance, (416) 593-8149 or **Iva Vranic**, Manager, Corporate Finance, (416) 593-8115.

22 OSCB September 17, 1999 page 5701

IOSCO Report on Hedge Funds

A Task Force of the International Organization of Securities Commissions (IOSCO) has released a report entitled Hedge Funds and Other Highly Leveraged Institutions (HLIs). The Task Force was chaired by David Brown, OSC Chair, and included representatives of regulators in 14 jurisdictions.

The Task Force was established in December 1998 in response to the near-collapse of the prominent hedge fund Long-Term Capital Management, LP. This raised issues about the risk to regulated institutions, markets and the financial system posed by highly leveraged institutions, and the need to address gaps in the regulation of these organizations.

The major findings of the report include:

- The first line of defence against system risk in the market is strong and prudent risk management processes at the regulated firms with which HLIs trade. The report outlines certain risk management tools and processes that may be particularly helpful in reducing the risks regulated firms may face when dealing with HLIs.

- Clear regulatory expectations, enforced by oversight mechanisms and coupled with regulatory incentives to maintain or improve risk management, may encourage improved risk management processes at regulated firms. The report lists regulatory incentives that may promote improvements in risk management processes at securities firms.

- Additional transparency on HLI activities is needed to further reduce system risks and the potential for destabilization. This may be achieved through mandating enhanced disclosure to the public or improved reporting to regulators and market authorities. On balance, public disclosure of HLI activities is recommended.

Reflecting the trend towards examining public disclosure, IOSCO is participating in the Multidisciplinary Working Group on Enhanced Disclosure, along with representatives of the Basel Committee on Banking Supervision, the International Association of Insurance Supervisors and the Committee on the Global Financial System. The Working Group is exploring what information on market and credit risk exposures should be publicly disclosed by market intermediaries, including HLIs.

"The first line of defence against system risk is strong and prudent risk management processes at the regulated firms with which HLIs trade."

Because information about HLI activities obtained from regulated firms is unlikely to provide a systematic, comprehensive overview, it probably will be necessary for HLIs to provide the information directly. At a minimum, voluntary provision of information should be encouraged, underpinned by market pressure and, if necessary, regulatory incentives.

IOSCO plans to continue to assess the progress of the ongoing international initiatives on public disclosure. Once the probable outcomes of these projects are known, IOSCO will assess if the achievable level of enhanced transparency will address the systemic risk and market destabilization concerns related to HLIs.

The text of the report is available at the IOSCO website *www.iosco.org*.

For more information, please contact **Tanis MacLaren**, Special Advisor to the Chair, (416) 593-8259.

Joint Forum Report Expected Soon

Representatives of Canada's securities, insurance and pension regulators are working together to strengthen consumer protection in the financial services sector.

Following the release last May of the Joint Forum of Financial Market Regulators' "Comparative Study of Individual Variable Insurance Contracts (Segregated Funds) and Mutual Funds", a working group was established to identify strategies for harmonizing the regulation of both products.

The Joint Forum is expected to consider the final Recommendations of the working group at their meeting scheduled in December. The Recommendations will cover areas where harmonization is warranted in the areas of product regulation, disclosure regulation, manufacturer regulation and distribution regulation. The Joint Forum has concluded that, apart from the areas highlighted in the recommendations, the regulation of seg funds and mutual funds is essentially the same.

Once the Joint Forum has approved the Recommendations, they will be released and published on the OSC's website and Bulletin.

The Joint Forum was formed in January 1999 so that Canadian securities, insurance and pension regulators could address issues of common interest arising out of the growing integration in the financial services sector.

The Joint Forum of Financial Market Regulators includes representatives of the Canadian Securities Administrators (CSA), the Canadian Council of Insurance Regulators (CCIR) and the Canadian Association of Pension Supervisory Authorities (CAPSA). The mandate of the Joint Forum is to coordinate and streamline the regulation of products and services in the Canadian financial markets.

For more information, please call **Rebecca Cowdery**, Manager, Investment Funds, (416) 593-8129.

OSC Develops Proposal to Establish a Securities Fraud Initiative

As a step in starting to address the serious issue of securities-related crime, staff of the Commission has developed a proposal for a securities fraud initiative. This would see staff of the Commission, the RCMP, other police forces and the Ontario Crown working more closely together on an operational level on a number of investigations and/or information gathering projects. The main goal of the proposal would be to obtain stable funding, including funding from the OSC, to allow various law enforcement agencies to conduct more investigations and initiate criminal proceedings, when appropriate.

For more information, please call **Brian Butler**, Manager, Investigation Team at (416) 593-8286.

Auditor Assistance to Underwriters and Others

The Canadian Institute of Chartered Accountants' Assurance Standards Board (the "Board") has issued an exposure draft for comment on "Auditor Assistance to Underwriters and Others.

The draft provides guidance to auditors who are asked to assist an underwriter in connection with an offering of securities pursuant to an offering document. Matters addressed include the preparation of "long form" comfort letters and the auditor's participation at due diligence meetings. The Board believes that the proposals codify best practices already in effect in Canada and the United States.

In the view of OSC staff, these proposals are of sufficient importance to the manner in which an effective due diligence process is completed that a full and informed discussion of the implications of the proposals should take place during the

comment period. Staff encourages all interested parties to comment on the exposure draft, and to provide copies of comments to the OSC. A copy should be sent to the Office of the Chief Accountant, Ontario Securities Commission, 20 Queen Street West, Suite 800, Box 55, Toronto, Ontario M5H 3S8, or by email at *oca@osc.gov.on.ca*.

For more information, please call **Marcel Tillie**, Practice Fellow, Office of the Chief Accountant, (416) 593-8078, or **Marianne Bridge**, Sr. Accountant, Advisory Services (416) 595-8907.
22 OSCB October 22, page 6560

Year-end Exemptive Relief Applications

As part of its efforts toward ensuring a smooth transition to the Year 2000, CSA staff has announced the following filing dates and review periods for applications just before and after the New Year:

a) all multi-jurisdiction applications, whether or not filed under the Mutual Reliance Review System for Exemptive Relief Applications, should be filed before November 5, 1999, or November 30, 1999, in the case of applications relating to take over bids, if exemptive relief is required before December 31, 1999. If the application is filed after this date, there are no assurances that the application will be reviewed or the necessary relief provided before year-end;

b) for applications filed under MRRS after November 5, 1999, or November 30, 1999, as the case may be;

c) if the Non-Principal Regulators' staff review period has not commenced before December 20, 1999, or would otherwise expire between December 20 and December 31, 1999, this period will not expire prior to January 7, 2000; and

d) if the Non-Principal Regulators' opt-in period would otherwise expire between December 20 and December 31, 1999, this period will be extended to January 7, 2000.

For more information, please call **Margo Paul**, Manager, Filing Team # 1, (416) 593-8136.
22 OSCB September 24, 1999, page 5877

OSC Warns Against RRSP Scams

With RRSP "season" approaching, the Commission recently warned investors to be wary of potentially illegal investment schemes that are promoted as a way to access money tied up in Registered Plans (e.g. RRSPs, RRIFs, LIFs, and Locked-in RRSPs).

A typical scheme involves an investor cashing in money held in a Registered Plan to buy shares in a company. The company accepts full payment for the shares and then refunds or loans part (e.g. 70-80%) of the purchase price back to the investor. The result is that the company retains a significant portion of the investor's money (e.g. 20-30%) either in the form of a transaction fee or a down payment on the share purchase price. In time, the investor will be obliged to pay back the loan, or to satisfy the outstanding balance on the share purchase.

This type of transaction may breach the Ontario *Securities Act*, and could lead to financial harm or unexpected tax liabilities for the investor. In particular, the OSC noted the following in its Investor Alert:

- If the shares that are sold to the investor are a direct issuance from the treasury of the company, or if the sale of the shares is a secondary market trade which is deemed to be a distribution pursuant to the *Act*, then the sale or trade will be an illegal distribution if a prospectus has not been filed and a receipt obtained as required by the *Act*.

- Advising and trading in securities is illegal unless performed by a company or person who is registered under the regulation under the *Act*, subject to certain limited exceptions. If the person or company selling the shares is not registered and does not benefit by any exemptions under the *Act*, the person or company has avoided regulatory scrutiny, which exists to protect the public interest.

- In the event that the shares are not freely tradeable shares, the shares will be illiquid in the hands of the investor, which will directly impact the inherent value of the shares.

- Although the shares to be purchased by the investor are likely touted by the lender as having good or great growth potential, they are more likely to be shares in the capital stock of a company that may have a short and weak earnings history, few if any assets, and an uncertain potential for growth. For many investors who are investing as a means to further a retirement plan, this kind of speculative shares is wholly unsuitable as an investment.

- In the event that the company becomes bankrupt before the investor has satisfied his or her debt, the company's creditors will likely call upon the investor to repay the debt, even though the shares of the company are worthless.

The OSC advises investors considering a loan program that resembles the kind outlined in this article to first consult a professional financial adviser about investment and tax implications.

For more information, please call **Rowena McDougall**, Corporate Communications Officer, (416) 593-8117 or **Benjamin Eggers**, Investigation Counsel Enforcement, (416) 593-8051.

CANADIAN SECURITIES ADMINISTRATORS

A summary of recent national initiatives from the Canadian Securities Administrators (CSA). The CSA is the organization of the securities regulators of the provinces and territories of Canada.

CSA Adopts Mutual Reliance Review System

Beginning January 1, 2000, Canada's securities industry will benefit from more streamlined reviews of prospectuses and exemptive relief applications filed in more than one province or territory under a new mutual reliance review system.

Under the new mutual reliance review system, or MRRS, a company filing a prospectus to issue securities, filing an annual information form or filing an application for exemptive relief will generally deal with only one securities commission in Canada, its principal regulator. The securities authorities in the other jurisdictions in which a filing is made will rely primarily on the analysis and review of the principal regulator in reaching their own decisions. Each jurisdiction will have the opportunity to opt out of the MRRS for a filing should it disagree with the proposed disposition of the filing. The filer will receive a document from the principal regulator confirming the decision of all relevant jurisdictions that have not opted out of the MRRS for that filing.

"MRRS procedures for registration of securities dealers and advisers are currently being reviewed as a result of public comments."

A non-principal regulator which has opted out of the MRRS for a filing will provide written reasons to the filer and advise the principal regulator and other regulators. A non-principal regulator would then deal directly with the filer, and when appropriate, issue its own decision document.

Committees of the Canadian Securities Administrators (CSA) will be responsible for promoting consistency and communication among the securities regulators and coordinating any changes or amendments to the MRRS. Each relevant CSA committee will meet at least semi-annually to review and discuss the operation of the MRRS. It is expected that the MRRS will facilitate, over time, the harmonization of legislative requirements and administrative practices across jurisdictions and provide consistent treatment of filers in Canada.

The MRRS was established by a memorandum of understanding among the members of the CSA, which was published on October 29, 1999. The MRRS for prospectuses, annual information forms, and exemptive relief applications is set out in the following policies that were published on November 1999:

- National Policy 43-201 MRRS for Prospectuses and Annual Information Forms; and
- National Policy 12-201 MRRS for Exemptive Relief Applications.

These policies can be viewed at the Ontario Securities Commission website (*www.osc.gov.on.ca*).

Changes to the SEDAR system were made in September to accommodate the implementation of the MRRS. MRRS procedures for registration of securities dealers and advisers are currently being reviewed as a result of public comments. The instrument to implement that system is expected to be republished for further comment at a later date.

For further information, please contact **Iva Vranic**, (416) 593-8115, or **James McVicar**, (416) 593-8154.

New Mutual Fund Rules Finalized

The CSA has released a user-friendly Mutual Fund prospectus disclosure system that will enable investors to make critical financial decisions based on easily understood information.

The Rules allow for information to be distributed in two documents: the Simplified Prospectus and the Annual Information Form. The Simplified Prospectus, which must be delivered to investors, is broken into two sections. One section provides introductory information about the Mutual Fund and its Manager as well as general information about Mutual Funds. A second section gives required information about a specific Mutual Fund in a standard format. The second document, the Annual Information Form, which provides additional information that some investors may find useful, must be given to those investors who ask for it. Both documents must be written in plain language that can be understood by investors.

A second Rule, designed to expand the scope of investor protection in regulating Mutual Funds and their management, was released at the same time. The second Rule represents years of effort by the Canadian Securities Administrators to re-examine regulations (currently contained in National Policy Statement No. 39) governing the structure and management of Mutual Funds. In writing the rule the CSA considered over 400 individual comments. The Rule is in response to those comments as well as issues that have come to the attention of regulators over the past few years. Once in force, National Instrument 81-101 will replace National Policy Statement No. 36, and National Instrument 81-102 will replace National Policy Statement No. 39.

If approved by the necessary government officials, both Rules will become effective on February 1, 2000.

For more information, please contact **Rebecca Cowdery**, Manager, Investment Funds, (416) 593-8129 or **Paul Dempsey**, Legal Counsel, Investment Funds, (416) 593-8091.

CSA Staff Guidance on the Practice of Mini-Tenders

Following discussions with a number of market participants, the CSA has issued a staff Notice on the phenomenon known as mini-tenders.

Generally, a mini-tender is an offer to purchase a limited number of shares of a public company at a price below current market price. While it would rarely be in an investors' best interests to sell their shares for less than what they could get in the market, a small shareholder might choose to tender to a mini-tender in order to avoid paying sales commissions that apply to market sales. The money lost in the discounted purchase price could be made up by avoiding minimum brokerage commissions.

Whether or not tendering to a mini-tender might be attractive in these very limited circumstances, CSA would like to stress that investors should carefully examine a mini-tender to determine whether it is in their interest to tender to it.

Mini-tender offerors use the information systems put in place by market intermediaries to communicate their offer to the security holders of the target issuers. In this regard, staff expresses its view that, unlike a take over bid, there is currently no requirement under Canadian securities legislation that notice of a mini-tender must be delivered to registered holders of the securities subject to the mini-tender. Furthermore, intermediaries are not obliged under Canadian securities legislation or policies to advise their clients who are not registered holders of securities of the commencement of a mini-tender.

CSA staff has serious concerns that investors might tender to a mini-tender based on a misunderstanding of the mini-tender or the current market price of the security subject to the mini-tender. Investors might mistake mini-tenders for take over bids which historically offer a premium to the current price. In staff's opinion causing investors to tender to a mini-tender based on such a misunderstanding can be abusive of the capital markets and contrary to applicable anti-fraud provisions of certain securities legislation.

Staff feel that to avoid misunderstanding, a widely disseminated mini-tender at below current price should include the following information:

- the principal market for the securities sought to be acquired, the date of the offer, and the market price for the securities immediately before the earlier of the public announcement of the offer or the date of the offer;
- a warning that the offering price is below the current market price of those securities;
- a statement that potential investors should consult their financial adviser;
- a description of the withdrawal rights of the security holders under the offer and details for the withdrawal procedure; if no such withdrawal rights exist, a clear statement should be included to that effect;
- if applicable, a statement that the offeror could revoke its offer at any time; and
- a clear calculation of the final price to be paid for the target securities.

Depositories, participants and intermediaries who summarize and forward notices of mini-tenders should, despite the fact that they are currently not required to do so, ensure that their summaries prominently include the warning that the offering price is below the current market price of those securities and that potential investors should consult with a financial adviser.

If staff feel that mini-tenders are conducted in a manner prejudicial to the public interest, staff will recommend that appropriate action be taken, which could include a cease trade order in respect to the mini-tender or the person or company making the mini-tender.

For more information, please call **Terry Moore**, Legal Counsel, Mergers and Acquisitions, (416) 593-8133.

Year 2000: Backup of Records

To ensure the continued integrity of market participants' records during the transition to the Year 2000, CSA staff recommends that market participants back up sufficient data relating to transactions to enable the participant to continue its critical functions in the Year 2000 even if all primary data is inaccessible. Staff recommends the backup take place before midnight on December 31, 1999.

Duplicate copies of data should be kept on paper, microfilm, microfiche or any appropriate digital storage medium or system that will make the information available in an accurate and intelligible form. In determining the method of storage, market participants should ensure they will have post-Year 2000 programs that can access and read pre-Year 2000 data. The records should be kept for a reasonable time in keeping with good business practices, and at least as long as needed to comply with legislative record-keeping requirements.

For more information, please call **Levi Sankar**, Legal Counsel, Capital Markets, (416) 593-8279.

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ENFORCEMENT

The following are summaries of recent enforcement proceedings and hearings before the Commission. For more information, please call the OSC at (416) 593-8314.

M.C.J.C. Holdings Inc. and Michael Cowpland

On October 14, 1999, the Ontario Securities Commission (the "Commission") laid an Information in the Ontario Court of Justice against Michael Cowpland, President and CEO of Corel Corporation, charging Cowpland with three counts of violating Ontario securities law. Cowpland's personal holding company, M.C.J.C. Holdings Inc., is also charged with one count of violating the Ontario *Securities Act* (the "Act").

One count in the Information alleges that in mid-August, 1997, Cowpland informed M.C.J.C. Holdings of a material fact with respect to Corel, other than in the necessary course

of business, before the material fact had been generally disclosed, contrary to subsection 76(2) and paragraph 122(1)(c) of the Act. A second count in the Information alleges that Cowpland, as a director of M.C.J.C. Holdings Inc., contravened subsection 122(3) of the Act in mid-August, 1997, by authorizing the commission of an offence by M.C.J.C. Holdings Inc. The offence was the sale of 2,431,200 shares of Corel for $20.4 million, which was made with knowledge of a material fact with respect to Corel that had not been generally disclosed, contrary to subsection 76(1) of the Act (also known as "insider trading"). The third count alleges that on May 20, 1998, Cowpland submitted untrue or misleading statements to the Commission, contrary to paragraph 122(1)(a) of the Act. Finally, the Information also alleges that M.C.J.C. Holdings sold 2,431,200 shares of Corel stock in mid-August, 1997, for $20.4 million with knowledge of a material fact with respect to Corel which had not been generally disclosed, contrary to subsection 76(1) and paragraph 122(1)(c) of the Act.

Mr. Cowpland and M.C.J.C. Holdings Inc., have provided an undertaking to the Commission which requires both of them to file reports with the Director of Enforcement at the Commission of any transactions either of them makes in securities of Corel Corporation on the same day that the transactions are made. The undertaking will continue in force until the earlier of staff revoking it in writing or the conclusion of the Ontario Court of Justice proceedings.

The first appearance of this matter took place in the Ontario Court of Justice on November 22, 1999. The proceedings were put over until January 14, 2000 at 9:00 a.m. and a judicial pre-trial conference was scheduled for the same day at 10:30 a.m. at Old City Hall, Toronto, Ontario.

Jennifer Lee Dewling

On November 11, 1999 the Ontario Securities Commission (the "Commission") approved a settlement agreement reached between Staff of the Commission and Jennifer Lee Dewling, the former chief operating officer of Fortune Financial Corporation ("Fortune").

In the settlement agreement, Dewling admitted that her conduct, as set out in the agreement, was contrary to the public interest. This conduct involved Dewling's supervision of Paul Tindall, a former salesperson sponsored by Fortune, and her involvement in a capital deficiency issue that arose at Fortune. In addition, Dewling admitted that she approved the use of an account at Fortune which allowed sales representatives to sell securities that they were not licensed to sell.

As part of the settlement agreement, Dewling agreed not to reapply for registration with the Commission in any capacity for a period of four months from the date of the Order. Dewling also agreed that for a further period of three months, following the expiry of the four-month period, she would not directly supervise any person in connection with that person's activities for which registration is required.

The settlement requires Dewling to successfully complete the Partners, Directors and Officers examination within four months of the date of the Commission's Order. Dewling was also prohibited from trading in securities for a period of four months from the date of the Order except that she is permitted to sell securities of which she is the beneficial owner as of the date of the Order.

In approving the settlement, the Commission said that the agreement recognized the role and duties of senior representatives of registrants and the need for registrants to meet their ongoing capital requirements.

Timothy Dowswell and Tim Dowswell Investments

At a hearing on November 15, 1999, the Ontario Securities Commission (the "Commission") ordered that Timothy Dowswell (who also carried on business as Tim Dowswell Investments) cease trading in securities permanently. The Commission originally issued a temporary cease trading order on October 10, 1995, against Timothy Dowswell, and against his father Ross Dowswell, both of Sarnia. That order was in effect pending the outcome of criminal charges brought against Timothy Dowswell. The Commission terminated the cease trading order that had previously existed against Ross Dowswell (who carried on business as Dowswell Investments).

On February 15, 1999, Timothy Dowswell was convicted of twelve charges under the *Criminal Code*. Eleven of the twelve charges were of fraud involving securities, in an amount totalling over $1.75 million. Timothy Dowswell was sentenced to three years' imprisonment on ten of the eleven fraud charges, and to two years' imprisonment on the eleventh charge. The twelfth conviction was for uttering a forged document, and resulted in a term of imprisonment of three years. All of the sentences are to run concurrently. At the time of the conduct that was the subject of the criminal charges, Timothy Dowswell was not registered under the *Securities Act*.

Hilry Hilton Neale

Following a settlement hearing on November 3, 1999, the Ontario Securities Commission (the "Commission") ordered that Hilry Hilton Neale's registration be terminated and that he cease trading permanently. Mr. Neale had pled guilty to several criminal charges which involved securities transactions in April, 1999 and June, 1999 and had been sentenced to serve a conditional sentence for a period of 18 months and to three months' imprisonment to be served concurrently to the conditional sentence. This sentence is to be followed by a probation order for three years. A term of the probation order is that Neale shall not accept from any person any sum of money for investment, whether or not the investment requires that Neale be licensed.

YBM Magnex International Inc. et al.

On November 1, 1999, Staff of the Ontario Securities Commission issued a Notice of Hearing against YBM Magnex International Inc. ("YBM"), ten directors, officers and advisors of YBM and two Canadian securities dealers for contravening the *Securities Act*. The individual respondents are as follows: Harry W. Antes, Chairman of the Board of YBM, Director and a member of the YBM Audit Committee; Jacob G. Bogatin, President, Chief Executive Officer and Director of YBM; Kenneth E. Davies, Director of YBM; Igor Fisherman, Chief Operating Officer and Director of YBM; Daniel E. Gatti, Vice-President of Finance and Chief Financial Officer of YBM; Frank S. Greenwald, Director and Member of the Audit Committee of

YBM; R. Owen Mitchell, Director and member of the YBM Audit Committee and Vice-President and Director of First Marathon Securities Limited (now known as National Bank Financial Corporation); David R. Peterson, Director of YBM; Michael D. Schmidt, Director of YBM; and Lawrence D. Wilder, Partner, Cassels Brock and Blackwell, Canadian counsel to YBM. The Co-Lead Underwriter Respondents are Griffiths McBurney & Partners and First Marathon Securities Limited (now known as National Bank Financial Corporation).

Staff's Statement of Allegations details six specific allegations, briefly summarized as follows:

- that YBM filed a preliminary prospectus dated May 30, 1997, and a final prospectus dated November 17, 1997, that failed to contain full, true, and plain disclosure of all material facts relating to the securities offered;
- that the Directors, Chief Executive Officer and Chief Financial Officer of YBM authorized, permitted or acquiesced in YBM filing a preliminary prospectus dated May 30, 1997 and a final prospectus dated November 17, 1997 that failed to contain full, true and plain disclosure of all material facts relating to the securities offered;
- that the Co-Lead Underwriters signed a certificate to a preliminary prospectus dated May 30, 1997 and a final prospectus dated November 17, 1997 which prospectuses, to the best of their knowledge, did not contain full, true and plain disclosure of all material facts relating to the securities offered;
- that YBM failed to comply with its continuous disclosure obligations by not issuing a news release forthwith disclosing the nature and substance of a material change in the affairs of YBM;
- that the members of the YBM Audit Committee (Antes, Greenwald and Mitchell), the Chief Executive Officer (Bogatin), the Chief Financial Officer (Gatti) and the Chief Operating Officer (Fisherman) of YBM authorized, permitted or acquiesced in YBM failing to comply with its continuous disclosure obligations by not issuing a news release forthwith disclosing the nature and substance of a material change in the affairs of YBM; and
- that Wilder made statements to Staff of the Commission during the course of staff's review of YBM's preliminary prospectus that, in a material respect and at the time and in the light of the circumstances under which the statements were made, were misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statements not misleading.

Dual Capital Management Limited, Warren Lawrence Wall and Shirley Joan Wall

On October 12, 1999, the Ontario Securities Commission (the "Commission") laid charges in the Ontario Court of Justice against Dual Capital Management Limited ("Dual Capital"), Warren Lawrence Wall ("Warren Wall"), the President of Dual Capital, and Shirley Joan Wall ("Joan Wall"), an officer and director of Dual Capital, including charges that Dual Capital, Warren Wall and Joan Wall traded in securities, namely, limited partnership units of Dual Capital Limited Partnership during the period from October, 1995 to December, 1996 without being registered to trade in such securities and without having filed a prospectus contrary to the provisions of the Ontario *Securities Act*. The first appearance was scheduled for Wednesday, November 24, 1999 in Barrie, Ontario concerning the scheduling of the trial.

The Commission also issued a Notice of Hearing and related Statement of Allegations against Dual Capital, Warren Wall, Joan Wall, DJL Capital Corp. ("DJL Capital"), Dennis John Little ("Little"), Benjamin Poirier ("Poirier") and Irvine Dyck ("Dyck").

The allegations made by Staff of the Commission against the respondents include the following:

- During the period from October, 1994 to December, 1996, Dual Capital, the general partner of the limited partnership Dual Capital Limited Partnership (the "Limited Partnership"), accepted subscriptions to limited partnership units (the "Units") from approximately forty-seven investors residing in Ontario and raised funds in the amount of at least U.S. $1,495,046.00.

- Dual Capital, Warren Wall, Joan Wall, Little, Poirier and Dyck traded in securities without a prospectus contrary to the requirements of the *Securities Act*.

- Certain of the Respondents were not registered in any capacity to trade in securities, and other Respondents, although registered, traded in securities contrary to their registration under the Act.

- The investment was unsuitable for the clients who invested, and each investor did not receive the Offering Memorandum in respect of the offering of the Units.

- Dual Capital, Warren Wall and Joan Wall failed to disclose to investors that funds accepted from investors for the purchase of Units were not used to "facilitate trades in financial instruments" as set out in the Offering Memorandum, and further failed to disclose that investors' funds instead were used for payments to various companies and persons.

- The promoter, DJL Capital and its President, Little, received payments from Dual Capital in the amount of approximately U.S. $161,525.00 with knowledge that the source of payments was funds received from investors and not income earned from any investment made by the Limited Partnership.

- Representations made in promotional material were misleading to investors and did not state that the securities were speculative contrary to the statement made in the Offering Memorandum.

The first appearance in respect of the Commission matter was held Wednesday, November 10, 1999. The Commission matters have been adjourned pending the completing of the Provincial Offence proceeding.

Anwar Heidary and James Sylvester

On September 7, 1999, Staff of the Ontario Securities Commission (the "Commission") issued a Notice of Hearing and Statement of Allegations against Anwar Heidary and James Sylvester alleging that the Respondents sold securities to Ontario investors without being registered with the Commission. Staff also allege that the securities which were sold were not qualified by a prospectus and none of the prospectus exemptions was available for the distribution of the securities. The hearing of this matter is scheduled to commence on January 24, 2000.

CCI Capital Canada Limited

The Ontario Securities Commission ("Commission") issued reasons for decision on October 7, 1999 in relation to a hearing held on September 9, 1999 involving CCI Capital Canada Limited ("CCI"), a mutual fund dealer which, at that time, was registered with the Commission. On September 9, 1999, the Commission suspended the registration of CCI for a period of at least three months commencing on September 23, 1999. Staff of the Commission alleged that CCI failed to comply with terms and conditions imposed on its registration by the Commission which required CCI to file certain financial information with the Commission on a monthly basis. In addition, staff alleged that CCI failed to meet minimum capital requirements as of May 31, 1999 in the amount of $38,725.00.

In its reasons, the Commission held as follows:

> The requirements imposed on registrants for the filing of financial statements and other information with the Commission are imposed for the protection of their customers, and these requirements are necessary for the protection of those customers.
>
> It is no light matter for a registrant to consistently fail to comply with these requirements, and even more serious for a registrant to fail to comply with terms and conditions imposed as a result of failure to comply with the regulatory requirements. It is not good enough to argue that no one has been injured by the failure. It is the possibility of injury with which we have to concern ourselves in matters such as this one.

The Commission also held that the order will clearly indicate the seriousness with which the Commission regards the failure of a registrant to comply with its obligations to duly and punctually file the financial statements and other material which it is obliged to file.

Noram Capital Management, Inc.

The Ontario Securities Commission (the "Commission") has suspended the registration of Noram Capital Management, Inc. ("Noram"), an investment counsel portfolio manager registered with the Commission, for a period of at least six months commencing on October 7, 1999. Staff of the Commission had alleged that Noram failed to meet minimum working capital requirements since June 30, 1998 in amounts ranging up to $948,909. In addition, Staff alleged that Noram failed to comply with terms and conditions imposed on its registration by the Commission which required Noram to file certain financial information with the Commission on a monthly basis.

In addition to suspending Noram's registration, the Commission ordered Noram to provide to the Commission quarterly and monthly financial statements, which are to be accompanied with a working capital calculation, until further order of the Commission. The registration of Noram has been suspended for a period of six months or until Staff has received audited financial statements establishing that the capital deficiency has been made good, whichever is the longer period. The Commission also ordered that Noram send a letter by registered mail to each of its clients and to its dealer First Marathon Correspondent Network, to notify them of the suspension.

In its reasons, which were issued on October 19, 1999, the Commission found that the delivery to Staff of false and misleading financial statements was an intentional act of Andrew Willman, Noram's president. The Commission stated the following:

> There is no question that failure of a registrant to meet its minimum free capital requirements is a serious matter, failure to do so for a protracted period is an even more serious one, and supplying false and misleading financial statements to staff to conceal the failures is very serious indeed ... In proceedings of this sort, it is not our function to punish a registrant, but it is our function to impose such sanctions, if any, as we consider necessary to protect the marketplace and investors from a repetition of the improper conduct which we find to have been engaged in by the registrant ... We considered whether revocation, rather than suspension, of Noram's registration might be the proper sanction in these circumstances. However, we concluded that it was not necessary to go that far in this case in order to protect the marketplace. We concluded that, once it is established by audited financial statements that Noram had made good its regulatory capital deficiency, and after an appropriate period of suspension to recognize the seriousness of Noram's actions and serve both as a deterrent to Noram and as a general deterrent, it would be sufficient to impose additional terms and conditions on Noram's registration...

Alexis Capital Advisors Inc.

At a hearing on August 31, 1999, the Ontario Securities Commission ("Commission") approved a settlement agreement entered into between staff of the Commission and Alexis Capital Advisors Inc. ("Alexis"), a mutual fund dealer and limited market dealer.

In a Notice of Hearing and Statement of Allegations issued on August 25, 1999, Staff of the Commission alleged that Alexis had failed to deliver its audited financial statements within ninety days of its financial year-end, contrary to Ontario securities law. Alexis had previously failed to comply with reporting requirements and had failed to maintain the required minimum capital.

The Commission ordered that certain terms and conditions be imposed on Alexis' registration, including requirements that Alexis deliver monthly financial statements to the Commission, and that Alexis maintain an increased minimum capital. In addition, the Commission reprimanded Alexis.

James H. Ting, Frank E. Holmes, Chuck C.H. Tam, Douglas A.C. Davis and Kenneth C. Smith

At a hearing on Wednesday, October 6, 1999, the Ontario Securities Commission ("Commission") considered whether a Temporary Cease Trading Order, dated September 22, 1999, made against James H. Ting, Frank E. Holmes, Chuck C.H. Tam, Douglas A.C. Davis and Kenneth C. Smith should be extended.

The respondents are all current or former officers and/or directors of Semi-Tech Corporation ("Semi-Tech"). The Temporary Cease Trading Order prohibited the respondents from trading in any securities of Semi-Tech, its subsidiary, The Singer Company N.V. ("Singer") or Singer's subsidiary, G. M. Pfaff A. G. until two business days following receipt by the Commission of such filings as Semi-Tech is required to make under Ontario securities law or until further Order of the Commission. The Temporary Cease Trading Order was effective September 22, 1999 and was to expire on October 7, 1999. At the hearing on October 6, 1999, the Commission made a final Order on the same terms as the Temporary Cease Trading Order.

David Singh and Paul Tindall

On October 14, 1999, the Ontario Securities Commission (the "Commission") has issued a Notice of Hearing and Statement of Allegations against David Singh ("Singh"), the former president of Fortune Financial Corporation ("Fortune") and Paul Tindall ("Tindall"), a former salesperson employed by Fortune.

Staff of the Commission allege that Tindall sold securities to his clients without disclosing his personal interest in the issuer of the securities and on the basis of misrepresentations made to induce clients to invest. The investment was wholly unsuitable for the clients who invested. In addition, the securities which Tindall sold contravened the prospectus requirements of the *Securities Act*. When Tindall became aware of this and other illegalities, he attempted to conceal the problems in order to deceive his clients, Fortune and the regulatory authorities. Tindall eventually discovered that the investment was a fraud, and he made further misrepresentations to his clients to prevent them from speaking to the regulatory authorities.

Staff also made other allegations against Tindall in relation to his conduct while a salesperson at Fortune including selling shares on the same day that he purchased those securities for his clients' accounts and failing to keep the required documentation in respect of his clients.

Against Singh, Staff allege that he was aware of Tindall's activities but took no steps to discipline, control or monitor Tindall. In fact, it is alleged that Singh knowingly permitted Tindall to sell investments that were not approved by Fortune and he acquiesced in Tindall's scheme to falsify documents to attempt to conceal the illegalities of the investment referred to above.

Allegations are also made that Singh permitted mutual fund representatives to trade securities for which they were not registered by allowing them to use his representative code. It is also alleged that Singh sold securities subject to a hold period imposed by securities law when Singh knew that the hold period existed and prohibited his sales.

The hearing of this matter will be scheduled at the next appearance on December 16, 1999 at 10:00 a.m.

Michael McGuigan

On September 23, 1999, the Ontario Securities Commission (the "Commission") approved a Settlement Agreement entered into between Staff and Michael McGuigan ("McGuigan"). The settlement relates to a Notice of Hearing and Statement of Allegations which were issued against McGuigan on September 9, 1999 in which Staff alleged that McGuigan provided advice on investing in securities through an Internet newsletter called "WealthLine".

In the Settlement Agreement, McGuigan admitted that his conduct as the author of WealthLine was contrary to the public interest in that he acted as an adviser without registration in contravention of the *Securities Act*, he recommended the purchase and sale of securities in a publication without disclosing his interest in those securities and he caused and permitted misrepresentations to appear on the WealthLine webpage which were designed to induce individuals to subscribe.

The Commission approved an Order that McGuigan is prohibited from trading in securities for a period of two years except that he is permitted to sell securities of which he is the beneficial owner as of the date of the Commission's Order.

RECENT SPEECHES

The following are excerpts from recent speeches by OSC executives.

Remarks by David Brown, Q.C., OSC Chair, 2nd International Forum on Financial Markets, November 22, 1999

"What kind of regulatory architecture is required for the 21st century?

As is so often the case when discussing securities regulation, that question begs another question: How will patterns of investing evolve in the 21st century?

It is not an easy area in which to make predictions. Consider the changes that have come about in the nature of investing over just the past few years; the level of participation; ability to trade in virtually any market while sitting in your own home; range of investment instruments; utilization of technology; access to research; ease, speed, and transparency of trading. I am not about to try to draw a picture of investing over the next hundred years. It reminds me of the words of the legendary Hollywood producer, Samuel Goldwyn: "Never make predictions, especially about the future."

But if there is one thing history has demonstrated about investing, it is this: People are not about to restrict their investment decisions strictly by geography or jurisdiction. People will invest as widely as technology allows, and the law permits. In a world of open financial borders and real-time communications, there is one market: the world.

The regulatory architecture for the 21st century must take that into account. Attempts to value the global volume of securities and derivatives traded cross-border are difficult, to say the least. But evidence that capital markets are becoming more international in character is ubiquitous.

The stock exchanges in New York, London, Amsterdam, Paris and Singapore, along with NASDAQ, all have a substantial number of foreign issuers. Private-sector pension funds also hold significant foreign assets.

But regulation still exists only at the domestic level.

The transnational nature of global trading has removed it from the full jurisdictional reach of domestic regulation. How does one ensure proper regulation of this global potpourri? Especially when an increasing number of regulatory issues do not just cross political jurisdictions, but also sectoral lines — including banking and insurance, as well as securities?

Clearly, one of the greatest challenges facing regulators is the need to overcome the gap caused by a lack of formal regulatory structures at the international level. How do we ensure the kind of investor confidence that has helped to spur growth over the course of this century?

We now have a global securities market — does that demand a global securities watchdog?

National sovereignty is not about to simply disappear. What kind of arrangements are required — and realistic — to establish at the international level the discipline that exists at the domestic level? And what are the world financial regulators and financial industries doing to deal with this question?

The answer to that last question, in my opinion, is quite a bit. An international regulatory architecture is taking shape. It is not fully built up, the infrastructure is not all in place, and the lines of decision making are not wholly connected from top to bottom.

But consider the international institutions that exist, the cross-border and cross-industry channels of communication that have been opened, and the multinational endeavors that have been launched.

A basic network is emerging.

It includes channels for regulators. The Basle Committee on Banking Supervision provides a rule-setting body in the field of banking supervision. The International Association of Insurance Supervisors promotes high standards in insurance supervision. IOSCO promotes the integrity of securities and derivatives markets among its 92 member countries.

"The creation this year of the Financial Stability Forum… offers the prospect for a common convergence point — or at least the early beginnings of one."

The emerging network includes channels for central banks, through the Committee on the Global Financial System. For stock exchanges, through the FIBV. For finance ministers, through the G7, the G10 and now the G22.

A virtual alphabet soup of agencies provides coordination, information, analysis, and monitoring — including the OECD, IMF, World Bank and BIS. The creation this year of the Financial Stability Forum, using the format proposed by the President of the German Bundesbank, offers the prospect for a common convergence point — or at least the early beginnings of one.

At this point, how well do the channels come together?

I would like to address that question from my own perspective, as vice-chair of the Technical Committee of IOSCO, and as chair of the IOSCO Task Force on hedge funds and highly leveraged institutions.

IOSCO is clearly committed to enhanced global cooperation among securities regulatory bodies around the world. The preamble to the organization's by-laws includes a commitment to better regulation on both the domestic and international level, in order to maintain just, efficient and sound markets.

IOSCO recognizes that sound domestic markets are essential for a strong domestic economy. But increasingly, its focus has turned to the integration of these markets into a global one. The goal is global cooperation: among regulators, between regulators and standard setters, and between regulators and market participants. IOSCO is pursuing these goals in such areas as common disclosure standards, uniformity in accounting principles, and common principles for securities regulation."

"In the Best Interests of Investors: Strengthening Fund Governance", John A. Geller, Q.C., Vice-Chair, OSC, at the Mutual Funds Symposium, The Canadian Institute, Toronto, October 18, 1999.

"Investors expect and deserve a high standard of conduct from the stewards of their money. Without this we will be unable to maintain their confidence in our capital markets. Someone, in addition to the regulators, must be looking out for investors' interests.... Securities legislation has always required a degree of "fund governance". The Securities Act (Ontario), and the securities acts of the other provinces, require a manager of a mutual fund to discharge its responsibilities honestly, in good faith and in the best interests of the mutual fund, and in a prudent and responsible manner.... We are concerned that these rules are not enough in today's climate of increasing competition for the dollars of the elusive investment fund investor.

Independent scrutiny of fund affairs by an independent group is a big part of fund governance, but fund governance is not only about fund boards. Other elements of fund governance include:

- Improving the information given to investors at point of sale and on a continuous basis thereafter.
- Clarifying the rights of investors in the face of fundamental changes to the fund operations.
- Clear fiduciary duties and established common ethical responsibilities of the various entities in the mutual fund complex.
- Ensuring that conflicts of interest for the entities in the mutual fund complex are minimized.
- Ensuring that the mutual fund complex understands and follows the rules set down by the regulatory regime.

The Canadian Securities Administrators needs to grapple with the need for increased scrutiny of fund managers by independent groups who have responsibility to look after the investors' interest. We want to avoid if we can dictating any particular structure for this governance mechanism. We should

also consider if there is any alternative to an independent board or advisory committee. For example, could independent trustees do the trick, or perhaps custodians or fund auditors could provide more scrutiny.

These are difficult and priority issues for the Commission and the other members of the Canadian Securities Administrators. We cannot, and should not, work through these issues alone. You deal with the issues surrounding fund governance on a daily basis. You should be, and indeed must be, thinking about the same issues we are. We have concluded improved fund governance is not a superficial, unnecessary concept important only to improve the public face of the mutual fund industry. Investors who are relying on mutual funds for their retirement and other savings needs deserve nothing less than our concerted efforts to ensure that the words of the Securities Act requiring fund managers to act in the best interests of mutual funds are not, to paraphrase Chairman Levitt, "empty words in a statute"."

Remarks by Howard I. Wetston, Vice-Chair, OSC, Canadian Investor Securitization Conference, November 8-9, 1999

"While bank deposits have declined, share ownership has climbed. The Toronto Stock Exchange estimates that close to 40 percent of adult Canadians are in the markets, through pension funds, mutual funds, or retail investments. In the early 1980s, stocks represented the fifth largest form of investment for Canadians. Today it's number two, behind home ownership. A nation of savers has become a nation of investors.

As for the Internet, you can hardly have a conversation without it coming up. In fact, it's too big for anybody in any business to ignore. We are in the midst of the equivalent of an industrial revolution.

Look at the reach. More than 160 million people around the world have Internet access — about six times the size of the Canadian population. Look at the growth. *The Industry Standard* reports that in the past year the number of Internet users increased 55 percent...

Technology is providing the vehicle for changing the nature of investing — providing speed, lower costs, convenience, accuracy, and independence. It has helped to increase individual investor participation in the markets, disseminate information about listed companies, and provide the basis for new waves of democratization of corporate decision-making. That includes opening up of analyst conference calls to investors via the Internet, and giving shareholders the opportunity to attend corporate annual meetings over the Net, in real time, with the chance to pose questions via e-mail.

Issuers are using the Net to disseminate information about corporate finance, products, price histories, ratings information, and expected earnings release dates. All of this is reducing the discrepancy in the information available to both large and small investors.

The Internet is providing investors with empowerment. Individual investors now have access to the information and trading strategies that until recently were the exclusive preserve of market-making firms. Power that used to reside solely on Wall Street or Bay Street is now available on Main Street. A few small Canadian brokerages are even giving away their research to anyone who visits their web site. If you can't do the research in-house, your partner might for example, Versus operates E*Trade which has teamed up with Yorkton Securities for its research. But, many are asking, where is the line between empowerment and exuberance? Online trading and day trading have both taken off in the United States at a faster clip than in Canada. That gives us the advantage of learning from the US experience. During the first quarter of this year, the average number of online trades per account at the leading US online broker increased 21 percent. Obviously competition and product differentiation are positive developments. But, for example, an article in the Journal of Finance, based on a review of nearly 78,000 households dealing with a large discount broker between 1991 and 1996, found that investors who traded the most earned an annualized return of 11.4 percent, compared to 18.5 percent for those who traded infrequently."

"Investors must set their own goals and measure their own risk tolerance"

While the web knows no borders, the law still does. Offerings may be permitted in some jurisdictions but not in others. The entire burden of evaluating the information rests with the investor. And regulators must determine what is and is not part of the prospectus. What about hyper links–those highlighted words on the web page that connect you to an entirely different web site? Which hyper links can an issuer properly attach to a prospectus and which should they not?

Investors must set their own goals and measure their own risk tolerance. If they seek to take advantage of new trading mechanisms, they must also seek to understand them, learn to use them, and recognize their inherent risks.

If they wish to substitute their own expertise for that of a professional broker, then they must ensure that their expertise is up to the task.

Most of all, investors must understand the difference between investing and gambling. Technology and enhanced competition create choices for investors.

Regulators must provide investors with a framework and investor protection is obviously a priority. Brokers must respect that framework. Investors must be aware of the risks and take the responsibility to operate within it."

(Government Proposes Amendments)

the Commission's efforts in improving Ontario's legislative and regulatory framework.

Many of the proposed amendments to the *Securities Act* will help the Commission to better carry out the powers and duties conferred upon it under the *Securities Act* and to discharge its mandate more effectively. Such amendments are intended to strengthen the securities regulatory framework in Ontario, to achieve harmonization with other Canadian securities regulators and to facilitate implementation of the virtual national securities commission. Many of the proposed amendments are aimed at increasing investor protection, streamlining the regulatory process and promoting operational efficiency between jurisdictions. Some of the proposed changes are technical amendments to correct errors and clarify current provisions.

Among the most significant changes to the *Securities Act* are proposed amendments to:

- Give the Commission the power to order a person or company to pay the costs of a hearing or investigation and to prohibit someone from acting as an officer or director of an issuer.
- Require insider reports to be filed within 10 days of trades, not 10 days after month end. This will ensure that the public has access to insider trading information on a more timely basis than is currently the case. In addition, amendments to the Commission's rule-making authority will also afford the necessary flexibility to vary any of the timeframes prescribed under the Act.
- Give the Commission the ability to deem issuers to be reporting issuers either upon their own application or upon the application of the Director. This amendment provides a further means of protecting the investing public by enabling the Commission to order that in appropriate cases, issuers with publicly traded securities are subject to the requirements of the Act.

"Give investors who purchase securities under certain prospectus exemptions a statutory right of action against the issuer or selling shareholder if the disclosure document contains a misrepresentation."

- Broaden the Commission's power to deem that a reporting issuer has ceased to be a reporting issuer by removing the requirement that an applicant must have fewer than fifteen security holders whose latest address is shown on the books of the company as in Ontario.
- Establish that the Freedom of Information and Protection of Privacy Act does not prevent the exchange of information with other regulators, stock exchanges, self-regulatory organizations and law enforcement agencies, both in Canada and elsewhere, nor does it require disclosure of information so obtained. In the context of today's global capital markets, this provision enhances the ability of the Commission to duly administer Ontario securities law and regulate the capital markets in Ontario.
- Extend the time periods required for take-over bids, permit bids to be commenced by advertisement and certain related matters. These amendments were all recommended in the Report of the Committee of the Investment Dealers Association of Canada to review Take-Over Bid Time Limits (the "Zimmerman Committee Report"). Such amendments have already been made by a number of other Canadian jurisdictions, but their proclamation has been deferred pending legislative change in all jurisdictions, including Ontario.
- Ensure that the Commission has sufficient authority to make rules in the areas where it was clearly intended that the Commission have the power to convert existing policy statements into rules as appropriate and where experience in the reformulation process has shown the existing provisions are not broad enough.
- Give investors who purchase securities under certain prospectus exemptions a statutory right of action against the issuer or selling shareholder if the disclosure document contains a misrepresentation. This right replaces the existing contractual right of action that is required to be provided to certain private placees pursuant to the Regulation. The required contractual right of action was originally intended to be an interim measure to be replaced by an appropriate statutory right of action. The new statutory right of action is similar to the existing statutory right of action given to a purchaser under a prospectus.
- Remove the ability of issuers to become "reporting issuers" by filing a securities exchange take-over bid circular. The use of a securities exchange take-over bid circular to become a reporting issuer raises investor protection concerns because a take-over bid circular, unlike a prospectus, is not subject to a review process and does not require certification that it "constitutes full, true and plain disclosure of all material facts."
- Allow disclosure by an investigator of information obtained for the purpose of an investigation or hearing without the need to obtain additional Commission orders and subject to certain conditions.

Most of the proposed amendments to the *Commodity Futures Act* seek to update that Act by incorporating the changes that have been made to the *Securities Act* since 1994, such as those relating to self-regulatory organizations, enforcement and rule-making. In addition, the proposed amendments include parallel amendments to those now being proposed to the *Securities Act*.

The proposed amendments to the *Toronto Stock Exchange Act* provide the framework for demutualization to allow continuance of the Toronto Stock Exchange under the *Ontario Business Corporations Act*. The proposed amendments contemplate approval of the application of continuance by both the Minister of Finance and the Ontario Securities Commission.

To view a copy of the proposed amendments, readers are invited to visit the Commission's website *osc.gov.on.ca*.

For more information, please call **Susan Wolburgh Jenah**, General Counsel, (416) 593-8245 or **Rossana Di Lieto**, Legal Counsel, (416) 593-8106 or **Susan Greenglass**, Legal Counsel, (416) 593-8140.

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If you wish to be on the mailing list for *Perspectives*, please contact us at:

Perspectives
Ontario Securities Commission
Corporate Relations Branch
20 Queen St. West
Toronto, M5H 3S8
(416) 593-8117

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